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In re Application of
SILLIKENS
Application No.: 10/559,949
PCT No.: PCT/EP2004/002553
Int. Filing Date: 08 March 2004
Priority Date: 10 June 2003
Attorney Docket No.: 9250-161
For: NUCLEIC ACID SEQUENCES THAT
CAN BE USED AS PRIMERS AND PROBES
IN THE AMPLIFICATION AND DETECTION
OF SARS CORONAVIRUS

DECISION ON PETITION

UNDER

37 CFR 1.497(d)

This decision is in response to applicants' "REQUEST TO CORRECT INVENTORSHIP UNDER 37 CFR 1.497(d)" filed in the United States Patent and Trademark Office (USPTO) on 22 December 2006.

BACKGROUND

On 08 March 2004, applicants filed international application PCT/EP2004/002553, which designated the United States and claimed a priority date of 10 June 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 23 December 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 12 December 2005 (10 December 2005 being a Saturday).

On 09 December 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 23 October 2006, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage were required.

On 22 December 2006, applicants filed the instant "PETITION TO CORRECT INVENTORSHIP UNDER 37 CFR 1.497(d)". The petition was accompanied by a statement by Marlieke Overdijk, a statement by Saskia van de Laar, a consent of assignee statement, a declaration of inventors, and the surcharge under 37 CFR 1.492(h).

DISCUSSION

37 CFR 1.497(d), provides:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, or if a change to the inventive entity has been effected under PCT Rule 92^{bis} subsequent to the execution of any oath or declaration which was filed in the application under PCT Rule 4.17(iv) or this section and the inventive entity thus changed is different from the inventive entity identified in any such oath or declaration, applicant must submit:

- (1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;
- (2) The processing fee set forth in Sec. 1.17(i); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see Sec. 3.73(b) of this chapter); and
- (4) Any new oath or declaration required by paragraph (f) of this section.

Applicants have satisfied items (1) and (2).

Item (3) has not been satisfied. A showing under 3.73(b) has not been provided. See MPEP § 324, item II. Also, the person signing the consent of assignee statement does not have apparent authority to sign on behalf of the legal entity. See MPEP § 324, item V.

As to item (4), a new declaration is not required by 37 CFR 1.497(f) in the instant situation.

Also, it is noted that the declaration of inventors filed 22 December 2006 is not in compliance with 37 CFR 1.63(a)(2). The full name of P.T.G. Sillekens (family name and at least one given name together with ay initial) has not been set forth. See MPEP § 605.04(b).

CONCLUSION

The request under 37 CFR 1.497(d) is **DISMISSED** without prejudice for the reasons set forth above.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.497(d)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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